

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

WILLIAM LOCKWOOD

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Plaintiff

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v.

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Civil Action No. WMN-02-CV-2068

PACIFIC USA, LTD., et al.

*

Defendants

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**PLAINTIFF'S MOTION TO STRIKE AS UNTIMELY
THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

William Lockwood, by his attorneys, Paul D. Bekman, Michael P. Smith, and Salsbury Clements Bekman Marder & Adkins, L.L.C., hereby moves to strike the Defendants' Motion to Adopt Third Party Defendant's Cross-Motion for Summary Judgment on Plaintiff's Complaint and For Leave to File a Memorandum in Support thereof, and for reasons states as follows:

1. This is a product liability case concerning a Pacific Cycle USA "Strike" mountain bike (the "Bicycle") which had been manufactured by the Defendant, Pacific Cycle, L.L.C., ("Pacific Cycle") and sold by Defendant, Toys "R" Us - Delaware, Inc. ("Toys "R" Us") to the Plaintiff in 1997. The Plaintiff alleges that while he was carefully and prudently riding the Bicycle, the S/R DuoTrack 7006 suspension fork separated at the point where the steering tube was inserted into the fork crown. This separation caused the Plaintiff to lose control of the bicycle and to fall forward onto his face, severely injuring it, fracturing multiple teeth and inflicting other serious injuries.

2. Under the Court's Scheduling Order as amended, the Defendants were to file all dispositive motions by February 14, 2003. The Third Party Defendants obtained prior approval

from this Court to file their dispositive motions by May 15, 2003.

3. On February 14, 2003, the Plaintiff filed a Motion for Partial Summary Judgment. The Defendants filed a Motion for Summary Judgment to Dismiss Plaintiff's Claim for Certain Damages. They did not file any other dispositive motions.

4. On May 15, 2003, the Plaintiff filed Motion to Preclude the testimony of Andrew W. Blackwood, Ph. D. at trial. The Third Party Defendants filed three motions.

5. At no time prior to May 15, 2003, despite participating in two telephone conferences with the Court, did the Defendants seek to extend the time in which they could file a dispositive motion.

4. On May 28, 2003, the Plaintiff filed his opposition to SR Suntour, Inc.'s Cross-Motion for Summary Judgment on Plaintiff's Complaint.

5. On May 29, 2003, three-and-a-half months after the deadline for filing dispositive motions, the Defendants filed a motion for summary judgment together with a lengthy memorandum and exhibits totaling 103 pages.

6. The Defendants have provided no good cause for failing to comply with the Scheduling Order.

WHEREFORE, the Plaintiff, William Lockwood, respectfully requests that this Honorable Court strike the Defendants' Defendants Motion to Adopt Third Party Defendant's Cross-Motion for Summary Judgment on Plaintiff's Complaint and For Leave to File a Memorandum in Support Thereof.

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2d day of June 2003, a copy of the foregoing Plaintiff's Motion to Strike as Untimely the Defendants' Motion for Summary Judgment and memorandum in support thereof were forwarded electronically to the following:

Michele R. Kendus, Esquire
Venable, Baetjer & Howard, LLP
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Attorneys for Defendant, Pacific USA, LTD
Pacific Cycle, LLC and Toys "R" US-Delaware, Inc.

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SR Suntour, Inc. and SR Suntour, USA

MICHAEL P. SMITH

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**PLAINTIFF’S MEMORANDUM IN SUPPORT OF HIS MOTION TO STRIKE
AS UNTIMELY DEFENDANTS’ MOTION OF FOR SUMMARY JUDGMENT**

William Lockwood, by his attorneys, Paul D. Bekman, Michael P. Smith, and Salsbury Clements Bekman Marder & Adkins, L.L.C., hereby files this memorandum in support of his Motion to Strike as untimely the Defendants’ Motion for Summary Judgment.

This is a product liability case concerning a Pacific Cycle USA “Strike” mountain bike (the “Bicycle”) which had been manufactured by the Defendant, Pacific Cycle, L.L.C., (“Pacific Cycle”) and sold by Defendant, Toys “R” Us - Delaware, Inc. (“Toys “R” Us”) to the Plaintiff in 1997. The Plaintiff alleges that while he was carefully and prudently riding the Bicycle, the S/R DuoTrack 7006 suspension fork separated at the point where the steering tube was inserted into the fork crown. This separation caused the Plaintiff to lose control of the bicycle and to fall forward onto his face, severely injuring it, fracturing multiple teeth and inflicting other serious injuries.

Under the Court’s Scheduling Order as amended, the Defendants had until February 14, 2003, to file any dispositive motions. Consistent with their knowledge of that deadline, Defendants timely filed a Motion for Summary Judgment to Dismiss Plaintiff’s Claim for

Certain Damages. Since the filing of that motion, the Defendants have at no time requested an extension of the time in which to file any additional dispositive motions.

The Third-Party Defendants, who did not appear in the case until mid-January, affirmatively sought such an extension. Third-Party Defendants were first given until April 30, 2003, to file such motions, and after two telephone conferences with the Court in April of 2003, the time for the Third-Party Defendants to file dispositive motions was extended to May 15, 2003.

On May 15, 2003, the Third-Party Defendants filed (1) a Motion for Summary Judgment on Plaintiff's Claim for Medical Expenses and Other Related Expenses Incurred When Plaintiff was a Minor, and (2) a Cross - Motion for Summary Judgment on Plaintiff's Complaint. Plaintiff filed his opposition memorandum to the first motion on May 22, 2003, and an opposition memorandum to the second motion on May 28, 2003.

The Defendants moved on May 28, 2003, for an extension of time in which to respond to the Motion for Dismiss filed by Suntour USA. Once again, the Defendants show an understanding of the Court's Scheduling Order as amended.

On May 29, 2003, three-and-a-half months after the deadline for filing dispositive motions, the Defendants moved for summary judgment and filed a lengthy memorandum and exhibits totaling 103 pages. The Plaintiff is severely prejudiced by this untimely filing, having already timely responded to the Motions of the Third-Party Defendant in a timely fashion.

Because the Defendants have offered no genuine good faith basis for their untimely Motion for Summary Judgment, it should be stricken and not considered.

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